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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PAUL C. ROSS

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Appeal 2009-000413  
Application 09/735,335  
Technology Center 3600

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Decided:<sup>1</sup> July 1, 2009

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*Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-28 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF THE DECISION

We REVERSE.

## THE INVENTION

The Appellants' invention is directed to disseminate geographically sensitive information. An illustrative embodiment of present invention comprises a telecommunications base station and one or more telecommunications terminals. The telecommunications base station broadcasts: 1) a geographically-sensitive message 2) an indication of where that message is considered more relevant 3) a priority of the message, and 4) a designation of the nature of the content to all of the telecommunications terminals within its purview. (Specification 2:5-17). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A telecommunications terminal comprising:  
a receiver for receiving a plurality of broadcasted geographically-sensitive messages having associated geographic locations of relevance and priorities, and for ascertaining a geographic location of said telecommunications terminal; and  
a processor configured to determine a geographic region of interest of said telecommunications terminal based on said geographic location of said telecommunications terminal, to determine whether the geographic locations of relevance associated with the plurality of broadcasted geographically-sensitive messages are within said geographic region of interest of said telecommunications terminal, to filter out the broadcasted geographically-sensitive messages whose

associated geographic locations of relevance are not within said geographic region of interest of said telecommunications terminal, and to order the unfiltered messages according to their associated priorities.

### THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Ernst	US 5,636,245	Jun. 3, 1997
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The following rejections are before us for review:

1. Claims 1-4, 6-9, 11-12, 14-15, 17-21, and 23-27 are rejected under 35 U.S.C. § 102(b) as anticipated by Ernst.
2. Claims 5, 10, 13, 16, 22, and 28 are rejected under 35 U.S.C. § 103(a) as unpatentable over Ernst.

### THE ISSUE

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

With regards to claims 1-10 this issue turns on whether Ernst discloses broadcasted geographically-sensitive messages having associated both “geographic locations of relevance” and “priorities.”

With regards to claims 11-16 this issue turns on whether Ernst discloses a message having both 1) “a definition of the geographic region of relevance” and 2) “an associated indicium of the geographic region of relevance.”

With regards to claims 17-28 this issue turns on whether Ernst discloses determining whether the determined geographic regions of relevance overlap the geographic region of interest.

### FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:<sup>2</sup>

FF1. Ernst discloses location based selective distribution of generally broadcast information. Information broadcast by a general transmitter is found to be relevant to a user based on location and velocity and/or time corresponding to an event, as well as an event specific tag (Title, Abstract).

FF2. Ernst discloses that a navigational receiver receives the current position, velocity and/or time information, and an event specific tag (Col. 2:6-14).

FF3. Ernst discloses that the selection criteria may include positions, velocities, times, as well as event specific tags to customize and reduce the amount of information disseminated. This information is the basis for defining matching conditions for broadcast (Col. 3:43).

FF4. Ernst does not disclose receiving a plurality of broadcasted geographically-sensitive messages having both associated geographic locations of relevance and priorities.

FF5. Ernst does not disclose the broadcast messages both having a definition of a geographic region of relevance and an associated indicium of the geographic region of relevance or the messages being labeled by the indicium of a geographic region of relevance.

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<sup>2</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF6. Ernst does not disclose the system to determine a geographic region of interest based on the geographic location of the telecommunications terminal, to determine whether the determined geographic regions of relevance overlap the geographic region of interest.

## PRINCIPLES OF LAW

### *Principles of Law Relating to Anticipation*

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

### *Principles of Law Relating to Obviousness*

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying

factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 415-16.

## ANALYSIS

### *Claims 1-10*

The Appellant argues that the rejection of claims 1 and 6 under 35 U.S.C. § 102(b) as anticipated by Ernst is improper because the reference fails to disclose the limitation “to filter out the broadcasted geographically-sensitive messages whose associated geographic locations of relevance are not within said geographic region of interest of said telecommunications terminal, and to order the unfiltered messages according to their associated priorities” (Br. 10). The Appellant also argues that Ernst does not disclose “receiving a plurality of broadcasted geographically-sensitive messages having associated geographic locations of relevance and priorities” (Br. 11, Reply Br. 1-3).

In contrast the Examiner has determined that Ernst does disclose these cited limitations (Ans. 9). The Examiner has determined that messages on a list of interest in Ernst could be messages having priority and that messages to users based on position and velocity are provided (Ans. 9).

We agree with the Appellant. Claim 1 requires that the broadcasted geographically-sensitive messages have associated therewith both “*geographic locations of relevance*” and “*priorities*.” (Emphasis added). Claim 1 further includes a requirement to “*order the unfiltered messages according to their associated priorities*.” (Emphasis added). Ernst discloses location based selective distribution of generally broadcast information based on the location and velocity and/or time corresponding to an event, as well as an event specific tag (FF1). While Ernst does disclose the selection criteria for broadcast includes the geographic location (FF3) there is no mention of the messages having associated *priorities* (FF4). Since there is shown no transmitted message priority, there can also be no “*ordering of the messages according to their priorities*.” For these reasons the rejection of claim 1 under 35 U.S.C. § 102(b) as anticipated by Ernst is not sustained. Claim 6 contains a limitation similar to the one addressed above and the rejection of this claim is not sustained for the reasons given above. Claims 2-5 and 7-16 depend from claims 1 and 6 respectively and the rejection of these claims is not sustained for these same reasons.

#### *Claims 11-16*

The Appellant argues that the rejection of claim 11 under 35 U.S.C. § 102(b) as anticipated by Ernst is improper because the reference fails to disclose the limitation for

a receiver for receiving a first message having a definition of a geographic region of relevance and an associated indicium of the geographic region of relevance and for receiving a plurality of broadcasted geographically-sensitive messages, the plurality of



broadcasted geographically-sensitive messages being  
labeled by the indicium of a geographic region of  
relevance . . . .

(Br. 10).

In contrast the Examiner has determined that Ernst does disclose the cited limitation (Ans. 3-4, 9).

We agree with the Appellant. Claim 11 requires a first message having both 1) “a definition of the geographic region of relevance” and 2) “an associated indicium of the geographic region of relevance.” Claim 11 further requires the “messages being labeled by the indicium of a geographic region of relevance.” Ernst does not disclose the broadcast messages both having a definition of a geographic region of relevance and an associated indicium of the geographic region of relevance or the messages being labeled by the indicium of a geographic region of relevance (FF5) as required by the claim. For these reasons the rejection of claim 11 under 35 U.S.C. § 102(b) as anticipated by Ernst is not sustained. Claim 14 also contains a limitation for “receiving a first message having a definition of a geographic region of relevance and an associated indicium of the geographic region” and the rejection of this claim is not sustained for the reasons given above. Claims 12-13 and 15-16 depend from claims 11 and 14 respectively and the rejection of these claims is not sustained for these same reasons.

#### *Claims 17-23*

The Appellant argues that the rejection of claim 17 is improper because it requires Ernst to disclose the claim limitation for the processor:

to determine a geographic region of interest based on  
said geographic location of said telecommunications  
terminal, to determine whether said determined  
geographic regions of relevance overlap said

geographic region of interest, and to filter out said broadcasted geographically-sensitive messages whose determined geographic regions of relevance fail to overlap said geographic region of interest.

In contrast the Examiner has determined that Ernst does disclose this limitation since a matching process through a processor is used (Ans. 5-6).

We agree with the Appellants. Claim 17 requires operations “to determine a geographic region of interest based on said geographic location of said telecommunications terminal, *to determine whether said .....regions of relevance overlap said .....regions of interest*” (emphasis added). Ernst discloses that the selection criteria for information dissemination may include positions, velocities, times, as well as event specific tags and that this information is the basis for defining matching conditions (FF3). However Ernst does not disclose the system “to determine a geographic region of interest based on said geographic location of said telecommunications terminal, *to determine whether said determined geographic regions of relevance overlap said geographic region of interest*” (emphasis added) (FF6) since a matching and not an “overlapping” process is undertaken. For these reasons the rejection of claim 17 is not sustained. Claim 23 contains a limitation similar to the one above and the rejection of this claim is not sustained for same reasons. Claims 18-22 and 24-28 depend from claims 11 and 14 respectively and the rejection of these claims is not sustained for these same reasons.

### CONCLUSIONS OF LAW

We conclude that Appellant has shown that the Examiner erred in rejecting claims 1-4, 6-9, 11-12, 14-15, 17-21, and 23-27 under 35 U.S.C. § 102(b) as anticipated by Ernst.

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We conclude that Appellant has shown that the Examiner erred in rejecting claims 5, 10, 13, 16, 22, and 28 under 35 U.S.C. § 103(a) as unpatentable over Ernst.

#### DECISION

The Examiner's rejection of claims 1-28 is reversed.

REVERSED

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